that he has placed the note in the hands of a broker, to be disposed of by him in the usual manner of such securities.

When the pledge consists of *movable goods*, they are generally sold at *public auction*, after proper advertisement in the newspapers. And it is obvious enough that notice of the time and place of sale may be advantageous to the pledger.

Stocks, and similar securities, are sold at the brokers' board. Notice of the time and place may, unquestionably, be rendered serviceable to the pledger, who may influence his friends and others to give orders to purchase, which may insure the full market value.

The mode of selling *promissory notes* through the agency of a note broker, cannot, perhaps, be quite so readily turned to account by the pledger. Yet, as the name and place of business of the broker must be furnished to the pledger a reasonable time before the actual sale should be made, we are assured, by very competent authority, that the pledger may frequently advance his interest, by procuring friendly purchasers to apply to the broker, or by substituting other pledges better suited to the existing demands of the market, or by recourse to other legitimate expedients, which a shrewd and well informed broker with whom, *by the notice*, he may be put into communication, may suggest.

And whether or not such notice be likely, in general, to result beneficially to the pledger, the *chance*, whatever may be its worth, is his *right*, and a proper administration of the law demands its protection.

The first and second exceptions taken by the plaintiff are sustained, and the award set aside.

Award set aside.

In the Circuit Court of the United States.

PAUL T. JONES *vs.* THE FLOATING ZEPHYR. L. G. MYTINGER &c. *vs.* THE SAME.

Where a ship is detained in port by ice, and her cargo is damaged before the season allows her to proceed, though she subsequently delivers it to the consignees, a shipper cannot, without rescinding the contract, sustain a libel *in rem* for a breach of the bill of lading, until the term for the performance of the contract has expired.

These cases came into the Circuit Court on appeal from a decree in the admiralty in favor of the respondent. Both appeals involved the same questions, and were argued and decided together.

The libel, in the first case, was presented on February 28th, 1856; that in the second case was presented March 10th, 1856.

The libellants, respectively, alleged that in the month of December, 1855, they shipped on board the ship The Floating Zephyr, a foreign vessel, belonging to the port of Boston, but then lying in the port of Philadelphia and bound for Liverpool, a certain number of barrels of flour, to be carried to Liverpool and to be delivered there in good order and condition, to the order of the shipper, or to assigns (in the first case,) and (in the second case,) to Richardson, Spence & Co., or their assigns. Bills of lading, in the usual form, were signed by Shepherd Blanchard, the master of the ship, and part owner thereof. That the officers of the ship, in disregard of their duty, and contrary to the usage of merchants and of this port, received on board a large quantity of Indian corn, a portion of which was unsound, and all of which was improperly and defectively stowed, being placed in the hold, in layers under and over the barrels of flour. That the ship, by unreasonable delay in her sailing, became frozen up in her berth, and did not begin the voyage for a period of five weeks and upwards, during which time the corn gradually deteriorated by and under the influence of the heat of the ship. That the damaged corn was not discharged from the ship as it should have been, but was allowed to injure and destroy the flour. That on or about the 20th of February, 1856, the corn and flour were removed—spoiled and offensive—from the ship, by the order of the master; the flour being stored on shore, and so damaged by the heat as to be unfit for reshipment. That the performance of the contracts, in the bills of lading, was thus rendered impossible by the negligence of the officers of the ship. That the damage to the libellants arose from the unreasonable delay in sailing, the unfit condition of part of the cargo, and the defective stowage of the whole of it.

The answer of Shepherd Blanchard denied that the cargo was improperly stowed, or that the Indian corn was in an unsound con-

dition when received. The respondent alleged that the cargo was stowed in a customary and proper manner. That the ship was detained entirely by the ice; and that, while frozen in, precautionary measures were taken to prevent injury to the cargo. That on the 15th of February a survey was had. That on the 18th of February the respondent apprised the shippers by letters, of the condition of the cargo, but that they refused to co-operate with him in any measures for its safety. That the cargo was discharged in compliance with the recommendations of the surveyors. That on the 23d of February, at the instance of the consignees, a second survey was made. That in accordance with the opinion of the surveyors, the damaged flour was reshipped for transportation. That the voyage to Liverpool was not broken up, and the performance of the contract had not been rendered impossible by the negligence of the owners of the ship.

The Floating Zephyr sailed for Liverpool subsequently to the filing of the libels, and delivered her cargo to its consignees.

The District Court, after argument dismissed the libels.

The opinion of the Court was delivered by

KANE, J.—It is unnecessary to decide most of the questions that were argued so fully by the counsel in these cases. There is a difficulty in the way of the libellants' recovery, which is at the threshold, and is, as it seems to me, insuperable.

They were shippers on board the Zephyr. She was arrested at the wharf, after lading, by the ice of winter; and the libellants' goods were damaged before the season allowed her to proceed. She sailed, however, at the earliest practicable time, and delivered her cargo at its place of destination to the several consignees. These suits were instituted by the shippers on their bills of lading, while the vessel was still at her port of departure. It is obvious that they were instituted too soon. The ship is liable integrally for the damage sustained by the cargo during the voyage by reason of causes not excepted against in the contract of affreightment. But she cannot be libelled nor her owners sued *de die in diem*, as the voyage advances, and one item or circumstance of default and damage follows another. The contract is an entire one, and unless

it be rescinded, the recourse for a breach of it must be sought when the term for its performance has expired. The liabilities under it cannot be split up; Valin L. 3, T. 3 art. 9; 2 Boulay Paty, 390. To meet this objection, the libellants allege in argument that the voyage was broken up by the detention of the vessel, and the contract for carriage abandoned; and they liken the case of detention by ice, to that of detention by blockade, which according to the adjudication in 3 S. & R. 559, (*Stoughton* vs. *Rappalé*) is said to justify a rescission of the contract by the shippers. But without entering upon the question, whether the declaration of a blockade has this effect, which has been decided by many jurists, (see the opinion of Chancellor Kent in *Palmer* vs. *Lorillard*, 16 Johns, 348, and Valin's Commentary on the 8th article of title 1, book 3 of the Ordonnance,) it is enough to observe:—

First.—That the ground on which a blockade is supposed to have this effect, is simply the uncertainty of its duration, it resting in the discretion of an enemy, while the period of a detention by ice is ascertainable within reasonable limits, which must be understood to have been in the view of the parties a detention "par force majeure a cause d'un obstacle passages." Val.

Second.—The case referred to was a case of replevin; and it decides, not that even a blockade rescinds the contract of affreightment, but that it justifies a party in rescinding it. Now, in the cases before me, the parties have not claimed to rescind the contract; but on the contrary, they establish it by claiming damages for a breach of the bill of lading, which defines its terms; as their consignees also have done, by accepting the goods when they arrived out.

The libels must, therefore, be dismissed. I do not pass upon the question, whether there was defective stowage of the libellants' goods; nor upon the question of law which was pressed in the argument, whether the libellants could rightfully have reclaimed them, or can now claim damages for the injury they may have sustained, without exhibiting as evidences of their title all the parts of the bill of lading. The references to Abbott, 596; Valin L. 3. T. 3, art. 17, Emerigon Ass. ch. 11, sect. 3. § 7; and Boulay

Paty, 2 Do. Com. Mar. T. 7, § 1, would, however, suggest to this last question, a negative answer."

Mr. Paul and *Mr. Geo. M. Wharton* for the appellants (the libellants below,) made the following points:

I. The voyage was broken up, because,

1. The character of the article was changed by the fault of the carrier, before the departure of the vessel. It was no longer *flour*, but something else.

2. Of the lapse of time—a period of two months, and more—after the shipment of the cargo.

3. Of the entire discharge of the cargo.

4. Of the new voyage having been undertaken, merely by agreement, between the captain and certain shippers. The libellants refused to consent to the arrangements of those parties, with regard to the disposition of the cargo.

II. It was within the power of the libellants to consider the voyage as at an end.

Stoughton vs. *Rappalé*, 3 S. & R., 559; Valin Com. on art. 9. Pothier, Traite de la Charte Partie, part 1, sec. 4, Nos. 97, 98, 102; The Isabella, 4 Rob. 77; 2 Boulay Paty, 385, 6, Title 8, sec. 6.

III. Duty of the captain in regard to stowage; and the specific liability of the ship for the negligence or bad stowage of the master.

Flanders on Shipping, p. 214, § 200, etc., and cases cited; Abbott, 425; Curtis on Merchant Seamen, 213–14; *Clark* vs. *Barnwell*, 12 How., 273; *Rich* vs. *Lambert*, Ib. 347.

Flanders, 217, § 202. *Schooner Freeman* vs. *Buckingham*, 18 How., 183.

Brass vs. *Maitland*, 88 Eng. Com. Law, 470; Ibid, p. 476, note.

IV. The real owner must sue in the admiralty. The bare legal title will be disregarded as in equity.

V. Consignor must sue when he is the real owner of the goods.

Flanders, pp. 461–4, and cases therein cited; *Ludlow* vs. *Bowne*, 1 John, 1; *Freeman* vs. *Birch*, 1 Nev. & Mar., 420; *Davis* vs. *James*, 5 Burr., 2680; *Grove* vs. *Brien*, 8 How., 439; *Lawrence* vs. *Minturn*, 17 How., 100.

Mr. Kane and *Mr. Geo. W. Biddle* for the appellee, (the respondent below,) contended:

I. That the action was one purely *in rem*, and as such, was dependent upon the General Maritime Law. The Rebecca, Ware's Rep. 190, 191, 192; The Yankee Blade, 19 How., 89, 90.

II. That the contract in each case, in the bills of lading, was an indivisible one. It was still in force when the suits were instituted. The recourse for the breach of a contract must be sought when the term for its performance has expired. The vessel subsequently sailed; her cargo was delivered to the consignees. The suits were premature; 2 Boulay Paty, 390. *Logan* vs. *Caffrey*, 6 Casey, 196.

The parties here did not claim to have *rescinded* the contract. They treated it as still subsisting. They therefore cannot recover. *Goodman* vs. *Pocock*, 69 Eng. Com. Law, 576.

III. That these contracts are *terrean* rather than *maritime* in their character, and are therefore not within the jurisdiction of the admiralty.

IV. That the libellants were bound to exhibit, as evidence of their title, all parts of the bills of lading. Even if the voyage had been broken up, the title to sue, in respect to Mytinger & Co.'s shipment, was in the endorsees of their bill of lading.

As to the right of the endorsee or consignee to bring his action, they cited 6 S. & R., 429; Lord Raymond, 271; 12 Mod., 146; 8 Howard, 438; 17 How., 107.

V. That there was no evidence, in the cases, of bad stowage, or of negligence in the conduct of the master.

This point, however, was not much discussed by the counsel for the respondent, who relied mainly upon the questions of law comprehended in the four preceding points.

After the argument upon both sides had been concluded, GRIER, J. affirmed the decree of the District Court, dismissing the libels.[1]

[1] It may be proper to remark, that the decree of the Circuit Court must, for the present, be regarded as a contingent decision of these cases. The learned Judge will write an opinion only in case the libellants determine not to appeal to the Supreme Court of the United States. Should they conclude, by next October, not to bring the cases before that tribunal, *Judge Grier* will *formally* decide the important and interesting questions involved in them.